

1 THE COURT: Mr. McDonald will now speak for  
2 Lawson.

3 MR. McDONALD: Thank you, Your Honor.

4 May it please the Court. Lawson also thanks  
5 you for your time. I know three weeks is long by any  
6 measure. With some of the drier testimony here, I  
7 think you can measure it in dog years, the last three  
8 weeks. So we really do appreciate your time.

9 So I'll really am going to get right to it  
10 here. Even though this case involves some technology  
11 that may or may not have been familiar to you the,  
12 good news is your decision in this case really comes  
13 down to applying the Court's instructions to use your  
14 common sense in deciding this case.

15 Who do you believe and who don't you believe?  
16 Who made sense and who contradicted the documents and  
17 other testimony? Who, like the oaths they took, told  
18 you the truth, the whole truth, and nothing but the  
19 truth? Who is trying to help you understand the truth  
20 and who was it that was trying to hide the truth?

21 Those are the things that you know how to  
22 decide even if you're not that person of ordinary  
23 skill in the art with a computer science degree in  
24 this case. And when you look at those issues, you'll  
25 see why Lawson should prevail in this case.

1           Second, you heard some discussion of smoke  
2 and mirrors. Well, I think you'll see from my  
3 presentation the smoke and mirrors came from the ePlus  
4 side. But putting the smoke and mirrors aside for a  
5 second, I'd like to talk about cake. Because,  
6 actually, the essence of ePlus' case is they want to  
7 have their cake and eat it, too.

8           They've got Dr. Yes, Dr. Weaver, the catalog  
9 guy. Everything is a catalog. No, that's not enough.  
10 Everything is multiple catalogs. Everything is  
11 thousands of catalogs to Dr. Yes on the infringement  
12 side.

13           But then we have Mr. Hilliard. He's Mr. No.  
14 Nothing is a catalog. It's not even one catalog.  
15 Even if it has all that same data in it like a parts  
16 master that their own witness has admitted is an item  
17 master. So on the one hand they try to make those  
18 claim real broad to cover everything at Lawson. Then  
19 when we get to validity, they try to shrink them down  
20 tiny. They are trying to have their cake and eat it,  
21 too.

22           You'll see from the Court's instructions that  
23 he doesn't give you two different claim constructions  
24 for the terms depending on whether you're looking at  
25 infringement or validity. The words mean the same

1 thing for both purposes. And that's what's going on  
2 in this case. That ePlus is trying to have it both  
3 ways.

4 So there are three main questions you really  
5 need to answer here.

6 (1) Did ePlus or really Fisher invent  
7 anything worthy of a patent that shows up in any other  
8 claims in this case?

9 (2) If not, why should you find those claims  
10 invalid even though the Patent Office allowed them;  
11 and

12 (3) Did Lawson infringe any of those claims  
13 or is Lawson really doing something completely  
14 different and really what's in the prior art?

15 And once you answer those three questions,  
16 you'll know everything you need to know to get through  
17 that very long verdict form you're going to have to  
18 answer questions for in this case.

19 So I'd like to turn to that first issue. Did  
20 Fisher invent anything worthy of a patent as described  
21 in the claims here? The answer to that is no. It's  
22 clearly and convincingly been shown to you in the  
23 evidence of this case.

24 So that question starts with the issue of  
25 what was in the prior art. What was already out there

1 in the marketplace and literature involving  
2 procurement?

3           So we go to slide 2. As I showed you in the  
4 opening statement, we were saying there were two main  
5 things in the prior art here that make these claims,  
6 all of these claims invalid. One is there RIMS system  
7 and the other is the TV/2 system. Both were on sale  
8 more than one year before the filing date on the ePlus  
9 patents. The patents-in-suit were filed August of  
10 '94. Turn the clock back 12 months, August '93.  
11 That's the magic data. If RIMS was on sale by then,  
12 it's prior art. If TV/2 was on sale by then, it's  
13 prior art.

14           And that's what we showed you clearly and  
15 convincingly in this case, that both of those systems  
16 were, in fact, on sale before August of '93. It even  
17 goes back to August of '92.

18           So if we go to the slide 3, please.  
19 Essentially, this is the old RIMS system as shown in  
20 the '989 patent, also as testified to by the inventors  
21 in this case who also were very familiar with the RIMS  
22 system. They talked about it having that inventory  
23 checking. That parts master list was the way it kept  
24 track of inventory. That RIMS system, that had  
25 requisitioning. That's the R in RIMS. Requisition

1 and inventory management system.

2 It generated purchase orders. Remember  
3 seeing that flow chart over and over again. If you  
4 look at the patent, there's all sorts of blocks and  
5 things referring to purchase orders. Actually, a lot  
6 more detailed in the RIMS patent, that old one, than  
7 even in the patent in this case.

8 So the RIMS system had all those functions.  
9 It had that customer selected parts master. But it  
10 also had something else. It had a host, which was  
11 typically Fisher, a distributor, a database of the  
12 Fisher products as well. And it had a way to  
13 communicate between those two things. That was the  
14 RIMS system. And that was what was not only in that  
15 patent that you saw over and over again or heard about  
16 again and again, the '989 patent, but was also being  
17 sold more than one year before the patents involved in  
18 this suit were filed.

19 Now, the Judge will give you some  
20 instructions that there are several ways things can be  
21 prior art, and one of them is in instruction No. 35  
22 I'm not going to read the whole thing because each one  
23 of them is pretty long, but that one relates to  
24 something about prior public sale, and it's also  
25 referred to in the instructions as on sale.

1           And I think the key thing here is that part  
2 of that instruction says, "It is not required that a  
3 sale was actually made. The essential question is  
4 whether or not there was an attempt to obtain  
5 commercial benefit from the invention."

6           So that's what had to have been happening  
7 before August of '93, whether we're talking RIMS or  
8 TV/2. Were they trying to get a commercial benefit?  
9 I think you saw that in several ways in this case.

10           If we can turn to slide 4, please. This is  
11 the trademark application that Fisher filed back in  
12 April of -- April 30 of '93. So that's over three  
13 months prior to that important date here. And that's  
14 issued in '94, but all these papers were filed in  
15 April of '93 on the Fisher RIMS trademark.

16           So if we can go to the next slide, please.  
17 So this is the actual application itself. And you can  
18 see up at the top there is the heading where they file  
19 it with the trademark office. There's the date stamp  
20 April 30, 1993, Patent and Trademark Office for the  
21 mark Fisher RIMS. That's the system we're talking  
22 about here. And then it goes on from there. There's  
23 a description that talks about the computer services  
24 involved here with requisitioning and so on.

25           Then down here it establishes the date that

1 they represented to the Trademark Office was the date  
2 they were using the Fisher RIMS trademark in commerce.  
3 They were getting that commercial benefit from the  
4 system. That date was August of '92. That's a whole  
5 year sooner than it has to be. We only have to show  
6 they were commercially benefiting from it by August of  
7 '93.

8 Then this paragraph also goes on the talk  
9 about the mark was used in literature and presentation  
10 of materials for the services. And three specimens  
11 showing the mark as actually used are presented  
12 herewith.

13 What are specimens? That's an example of  
14 using the trademark. That's whether the brochure  
15 comes in that you saw a few time.

16 So if we can go to the next slide, please.  
17 Part of the same document. Here's the first page of  
18 the Fisher RIMS brochure. So this is the document  
19 that describes this system to their customers. You  
20 can see there at the bottom it refers to Fisher  
21 Scientific, and there is a lot of discussion or at  
22 least some implication, I'll call it, in this case  
23 that this document was undated. And it was really  
24 pretty silly to have a fight over that when you think  
25 about it because this whole file was submitted and had

1 date stamps on it April 30 of '93. We know that's  
2 more than three or four months before the critical  
3 date anyway. Obviously, it was at least in existence  
4 by then.

5 But if we can go to the last page of this  
6 brochure, you actually see down in the lower right  
7 corner it does have a date on it. 3/93. March of  
8 '93. It makes perfect sense because this was filed on  
9 April 30. Even in this document here, you can see in  
10 the upper left corner of that last page of the  
11 brochure there's that same date stamp you saw on the  
12 other filings at the Trademark Office. April 30,  
13 1993.

14 So who is presenting you the smoke and  
15 mirrors on when the RIMS brochure was out? EPlus was.  
16 Not Lawson. Clearly, it was in use in commerce,  
17 commercial use, more than a year before the filing  
18 date.

19 If we can go to the next slide, please. We  
20 had some other evidence. This came in through a  
21 deposition that was a video deposition, and you  
22 probably didn't get much of a chance to see those  
23 documents, but they'll be with you when you go back in  
24 the jury room. This was from Ms. O'Loughlin's  
25 deposition, the lawyer for Fisher, who had talked



1 about the trademark application, who signed it  
2 actually. But she also talked about some other Fisher  
3 documents, including their annual report. It's called  
4 a 10(k). This particular one, you can see the date is  
5 highlighted there, is for the year ending December 31,  
6 1992.

7           So we know that whole year that's going to be  
8 more than one year before the filing date on these  
9 patents. So does this say something about the Fisher  
10 RIMS system being something that Fisher is  
11 commercially benefiting from way back in '92? Well,  
12 yes, it does, and this is Fisher's own words here.

13           If we can go to the next slide, please, and  
14 highlight that paragraph there. This is Fisher now  
15 disclosing to their shareholders in the official 10(k)  
16 filed with the Securities and Exchange Commission  
17 describing what's going on with their company. They  
18 have to be truthful in here.

19           Here's the paragraph talking about their  
20 Fisher RIMS system. I have one sentence highlighted  
21 here, but actually there's a couple of them that are  
22 pretty interesting. The one I've got highlighted  
23 there in the middle says -- well, let me take it from  
24 the top here.

25           On the first sentence, "Information on all

1 100,000 products offered in the Fisher catalog can be  
2 obtained through Fisher RIMS, the company's newest and  
3 most powerful electronic order system which provides  
4 paperless purchasing, receiving, billing, and product  
5 distribution."

6 That all lays it out. As of 1992 that's what  
7 RIMS was doing. The Fisher RIMS system. And it had  
8 100,000 products from the Fisher catalog in it. And  
9 you heard some testimony from ePlus trying to say, oh,  
10 well, which RIMS? When was it out? Boy, there were  
11 so many versions you don't know.

12 Then you hear testimony from their witnesses  
13 saying, Oh, the Fisher RIMS system didn't have any  
14 catalogs. Well, this shows you what Fisher itself was  
15 saying about that system. It did have at least the  
16 one huge catalog in it.

17 And if we go on to this sentence that's  
18 highlighted here, "The company believes that the lower  
19 procurement cost and increased control offered by  
20 Fisher RIMS has been instrumental in securing several  
21 long-term supplier agreements with large customers."

22 Now, you apply that against the Judge's  
23 instruction were they obtaining a commercial benefit  
24 from the RIMS system before August of '93? Obviously,  
25 they were. Obviously, they were. EPlus was the one

1 blowing smoke on this one, too.

2           They can talk about the smoke and mirrors in  
3 general. Our witnesses got up there. They answered  
4 the questions. Do we import vendor catalog  
5 information? Yes, we do, but we change it. Our  
6 customers pick it.

7           We didn't deny anything in there. There was  
8 no smoke and mirrors from our side. The smoke and  
9 mirrors was from ePlus and their attorneys on these  
10 issues. And I'm getting into the specifics on this  
11 one by one here. This is another example.

12           Go to the next slide, please. The time line.  
13 All that discussion when they brought in those  
14 inventors at the beginning of the case. And do you  
15 remember, by the way, that was when they were supposed  
16 to be proving infringement? And they brought in the  
17 first witness, Elaine Marion. Did Elaine Marion have  
18 any idea what was in the patents in this case? No.  
19 Did Elaine Marion have any idea what Lawson Software  
20 did? No. She didn't know anything that was relevant  
21 to infringement.

22           So who was blowing smoke there? They put her  
23 up there to present a nice face for the company, but  
24 she really didn't know anything except her own  
25 personal records that she had about competitors said

1 absolutely nothing about Lawson. And that this  
2 division lost money. They are successful maybe with  
3 settlements, but when they tried to sell these  
4 inventions, they lose money. So right out of the gate  
5 you saw who was blowing the smoke here.

6 Then they brought in the three inventors.  
7 Did they say anything about the Lawson system? No.  
8 Did they talk at all about what the claims actually  
9 cover? No. You went through all those witnesses  
10 supposedly for the infringement case. They didn't  
11 tell you anything that you needed to know about  
12 infringement.

13 So we got into that RIMS system, though, and  
14 you heard it through out the trial, Oh, well, we  
15 changed it. And we don't know what it was when. And  
16 then the time line came up. This is Exhibit 402.  
17 This was Mr. Kinross' outline here. Let me go to the  
18 next slide here where we have some parts highlighted  
19 on there.

20 Remember his testimony was that he was  
21 sitting -- he brought his computer over to  
22 Mr. Momyer's house. They sat down at maybe the  
23 kitchen table or living room. I can't remember where.  
24 Mr. Momyer is looking over his shoulder. They put  
25 this thing together several years ago.

1           What was the purpose? To try to nail down  
2   when RIMS had various features at various times for  
3   the lawyers, for the ePlus lawyers. We'll help them  
4   out here. We'll show them with clarity what RIMS had  
5   when. They are smart people over there at ePlus  
6   between the inventors and their lawyers. They could  
7   have been real clear about what RIMS did when if they  
8   wanted you to know that.

9           Instead, over and over again in this case  
10  they tried to cloud that issue up. Oh, RIMS, gee, it  
11  was so many different things. I don't know what it  
12  was. But then you got to see this time line finally  
13  near the end of the case when Mr. Kinross was on the  
14  stand, and we walked through this with you, and you  
15  can see way back in '89 they were talking about these  
16  features that are related specifically to the claims  
17  in this case.

18           Multiple inventory sourcing. So the various  
19  sources of inventory there. That was a key thing.  
20  Multiple vendors cutting purchase orders to multiple  
21  vendors from one requisition. You have seen that in  
22  some of the claims. They were trying to fight that in  
23  the RIMS system, but there it is in the inventor's own  
24  words well before August of '93.

25           Product cross reference, the matching of

1 equivalent things from one to another. That was there  
2 way back then. They had it well before '93, and they  
3 knew it. They just didn't want you to know it.

4 Then if you go on from there, you see in 1991  
5 to 1993 a few more entries where they are now sourcing  
6 off catalog items even if they didn't have a part  
7 number. And they are assigning vendors. So now they  
8 are clearly going to third-party sources, this is back  
9 in '91, in creating purchase orders even for these  
10 other vendors than Fisher by then.

11 Then after that there are other ongoing  
12 things as they say are not related to the patent in  
13 '92. Then you see the '93 where we get to the  
14 technology involved here, which is developing a TV/2  
15 interface. They say two things about it. Multiple  
16 catalogs searched. Integrated with requisitioning.  
17 That's really what this case is all about is adding  
18 those things from TV/2 to RIMS. They had already told  
19 that story, but they didn't want you to hear it.

20 And the testimony really backs everything up  
21 here that's on the time line. I can walk through that  
22 with you here. I'll show you several examples from  
23 Mr. Momyer especially here.

24 Can we go to slide No. 13, please. This is  
25 Mr. Momyer's testimony. The RIMS system as of April

1 of '93, did it check inventory? Remember some of the  
2 claims talked about that. Yes, checked local  
3 inventory it was managing and Fisher inventory at its  
4 distribution centers. Two kinds of inventory it was  
5 checking. The claims don't even specify what kind of  
6 inventory. Clearly not that one.

7 RIMS included a parts master like an item  
8 master. That comes up over and over again. That's  
9 the concept of having the cake and eating it, too.  
10 The parts master doesn't have catalogs, but our item  
11 master, golly, does.

12 Well, the RIMS system had that very important  
13 feature, the parts master, back then in April of '93  
14 as well.

15 If we can go to the next slide. Again,  
16 April of '93. Kind of a nice date here because the  
17 trademark application and the RIMS patent application  
18 were both filed in April of '93. Your common sense  
19 tells you that's the sort of thing somebody could do  
20 when the RIMS system was pretty much all settled. You  
21 know what it looks like. It's complete. It's done.  
22 Well, now we take care of the legal stuff. We'll file  
23 a trademark on it. We'll file a patent on it.

24 It's April of '93. This thing is done. So  
25 that's what's going on. That's why this April '93

1 date matches up so well.

2 It also had that cross reference between two  
3 different vendors. Here is Mr. Momyer talking about  
4 that.

5 And then if we can go to the next one then,  
6 please. Also Mr. Momyer continuing here, talking  
7 about that purchase order issue. Again, you saw that  
8 in the time line. On a lot of these things, you  
9 already saw in the time line. But he also admitted  
10 that in that thing called the internal customer  
11 purchase order, that's not some type of purchase  
12 order. He was saying that is important. This  
13 internal customer order is generated for a purpose.  
14 There's an actual transfer of funds within a customer  
15 from the requisition department to the owning  
16 department when you have those customer internal  
17 orders. And that's why the RIMS system itself even  
18 calls those purchase orders.

19 That patent, that RIMS patent, the Court will  
20 instruct you is really a part of the patents in this  
21 case. It's incorporated by reference. So if that  
22 thing calls those internal orders purchase orders,  
23 that is purchase orders for purposes of these patents.  
24 And they can't run away from that. So there's more  
25 smoke and mirrors to try to get away.



1           Can we go to the next one, please. This is  
2 just a reminder here. If we can blow up kind of the  
3 middle part of the page. This is the old RIMS patent  
4 now, filed in April of '93. You saw this a few times.  
5 Just emphasizing here the description in the patent,  
6 5A, that's what this is, the flow chart, showing that  
7 for each product on a requisition, the system figures  
8 out what type of product it is, product type, and it  
9 either goes to the one side to generate a customer  
10 internal purchase order like Mr. Momyer described or  
11 it goes the other way where it still prints a purchase  
12 order and creates a purchase order.

13           So it's generating multiple purchase orders  
14 off of a single requisition. There's a lot of detail  
15 about that in the RIMS description. You really don't  
16 see any detail at all about that in the  
17 patents-in-suit outside of the RIMS description  
18 because the RIMS system already had that.

19           Can we go to the next one, please? So this  
20 was Dr. Shamos summary here. And I have shown you at  
21 least some of the evidence. There was much more, as  
22 well as the time line, but this was his summary of all  
23 the things that were important to the claims in the  
24 case from when that RIMS patent was filed back in  
25 April of '93. Searches the database for items for

1 multiple sources. Building requisitions. Generating  
2 purchase orders from those requisitions. Checking  
3 inventory. Cross reference table. All of those  
4 things were out there in April of '93. The evidence  
5 fully supported Dr. Shamos' analysis.

6 And he looked at lots of documents. You  
7 heard him talk about nine pages of things he looked  
8 at. All lined up about, I think he said 40 or 50  
9 things per page. Documents, deposition testimony,  
10 including Mr. Christopherson's two days of deposition  
11 testimony under oath getting all the data here that he  
12 knew he could rely on for purposes of his opinion in  
13 this case.

14 He wasn't like Mr. Hilliard coming in and  
15 saying, Oh, ignore all the documents. I talked to  
16 somebody else, and they told me all the documents are  
17 wrong. That doesn't tell you anything. That's not  
18 helpful to you.

19 Dr. Shamos was relying on the sworn testimony  
20 from depositions and from the actual documents in this  
21 case to have his opinions, and there's no reason we  
22 need to apologize for that.

23 So with that support, we go to the next  
24 slide. That shows you then this was the old RIMS  
25 system commercially on sale by April of '93. All

1 those parts, we've gone through all of that stuff.

2 So that takes us to the next step here  
3 because we get to the TV/2. So this sets the stage  
4 now in '93 for the patents-in-suit. So Fisher hears  
5 the need from customers. They want him to put  
6 catalogs of companies other than Fisher on their  
7 system. Mr. Robertson talked about that a little bit,  
8 and he called it kind of counterintuitive.

9 Well, if your customer asks you to do  
10 something, I think it's kind of intuitive to try to do  
11 it for them is one thought that comes to mind. But  
12 moreover, when you think about that, that is really  
13 very consistent with the idea of what a published  
14 catalog has to be in this case or catalogs, as defined  
15 by the Court, have to be. Because Fisher is running  
16 this computer system. They are trying to sell stuff  
17 to a customer. Now that customer wants Fisher to also  
18 keep track of competitor products.

19 All those competitors don't want Fisher  
20 seeing private lists of information and special  
21 pricing information now, do they? No. They are going  
22 to have Fisher use the published catalogs. That's  
23 what you're going to share with your competitors. You  
24 can see what's out there in the public, what other  
25 people can see anyway. You can see that, I guess, but

1 I'm not going to show you unpublished, private  
2 material. So it really sets the stage, what he said,  
3 about what's going on here.

4 So that brings us up to this TV/2 system.  
5 They're looking around for what the customers want. A  
6 system that can integrate with the RIMS system and  
7 also load up those big paper catalogs from companies  
8 other than Fisher. So they turn to IBM. And this  
9 TV/2 system fits the bill. And we've proved that the  
10 TV/2 system was also out there on sale commercially  
11 benefiting IBM prior to August of '93.

12 That's, again, the critical date here, one  
13 year before the patents in this suit were all  
14 effectively filed. So before August of '93. And it  
15 had all the key features of being used to search  
16 multiple catalogs, selecting parts of catalogs to  
17 search, and interfacing with the requisition and  
18 purchasing system.

19 So if we could go to the next slide. I think  
20 it's 19. Got you saw this, of course, the IBM on  
21 general information manual. And this one, if we go to  
22 the next page of it, in the lower left corner here on  
23 really all the pages, or almost all the pages here  
24 anyway, you have that copyright date from IBM of 1991.  
25 So certainly supporting the idea that this is out

1 before August of '93.

2 And if we go to the next slide then, please.  
3 This has some highlighting. Part of that same  
4 exhibit. That's Defendant's Exhibit 105, by the way.  
5 As we go through the pages here, this one also has  
6 that 1991 date on it. It's got the heading  
7 "Introducing IBM Technical Viewer/2." And you can see  
8 in the first paragraph, it goes right to the same sort  
9 of things that the patents in this suit were talking  
10 about. The idea that you have this capability of  
11 producing and displaying large amounts of information,  
12 information from people like manufacturers who have  
13 parts catalogs and service manuals, things like that.  
14 Exactly what the issue is.

15 We all know people that have these  
16 cellphones, and I think it's Apple that has the phrase  
17 "There's an app for that." You have your iPhone. All  
18 these different things, if you need to do them, you  
19 can load up a little app on your iPhone.

20 Well, guess what? There's an app for that.  
21 When Fisher was looking for loading catalogs into  
22 their RIMS system, there was an app for that; TV/2.  
23 And this description makes that real clear here that  
24 you could go through that system for reading  
25 information, selecting data. You could include text,

1 diagrams, photographs, all the sort of things you'd  
2 see in a full blown catalog like that Fisher catalog.

3           Go to the next slide, please. This was also  
4 part of the same document. Also on a page dated 1991.  
5 Talking about you can select topics from an index.  
6 The user can select things. And then you can do  
7 searches by word or phrase in either a whole document  
8 or part of a document. You can select things to  
9 search. All those same things that are important to  
10 the claims in this case. All of that out there with  
11 TV/2 in 1991.

12           Go to the next slide, please. Now we'll move  
13 over to the brochure. Defendant's Exhibit 107. The  
14 TV/2 brochure. And it was a little strange to see  
15 some cars on the front because you're thinking TV/2 is  
16 a computer, it's not a sedan. They're not selling  
17 cars. But there was a reason. Ms. Eng explained to  
18 you why there's cars on here. It's because Volvo was  
19 actually using the TV/2 system for their car parts and  
20 for their service places and all that all over the  
21 place to keep track of their parts and help their  
22 individual dealers and service centers and such have  
23 access to their parts catalogs.

24           So it's a pretty lousy picture here, but I'm  
25 pretty sure those are Volvos in that picture. In this

1 first line under that picture on page 1 even talks  
2 about this being used for automotive and other  
3 industries. So sure, it was used for parts for cars.  
4 Cars have lots of parts. It's a perfect application  
5 for TV/2 or any system like that, but it's not limited  
6 to auto parts. It can be used for other industries as  
7 well.

8 If we go to the next page of this, you can  
9 see on this page some more description of it in the  
10 highlighted part. What's the whole point here? The  
11 benefit you get is it saves time. This is all having  
12 to do with searching large volumes of information,  
13 right? You save time. You save space. You don't  
14 have to have all those big paper catalogs around and  
15 the frustration of trying to find things because it's  
16 easy to search through the large information, and it's  
17 being used with especially developed software in a  
18 compact disk or CD-ROM technology. All that is set  
19 out here.

20 Remember Mr. Hilliard was trying to say, Oh,  
21 TV/2 doesn't want have catalogs. One of ordinary  
22 skill in the art wouldn't figure that out. Well, here  
23 it is.

24 If we can back up to the full page here.  
25 Across the top you see a couple of screen shots next

1 to, I assume, another Volvo, screen shots showing you  
2 the different manuals you can select to go search in.  
3 And then see the materials once you select that up  
4 there.

5 Then if we go to the next page, and Ms. Eng  
6 walked you through this. Why don't we go ahead and  
7 highlight those images up at the top here. Continuing  
8 in this brochure, here's a couple of pages showing you  
9 the drawings, the parts drawings, just like they would  
10 be in a paper catalog. All the details there. And  
11 you can even see some -- looks like parts on a drop  
12 down menu that you can scan out there. She talked a  
13 little bit about that as well.

14 This is obviously not a great photocopy, but  
15 Ms. Eng explained all this, and it makes perfect sense  
16 when you see all the information and hear all the  
17 testimony on what TV/2 did.

18 Go back out again from this one to the lower  
19 left. TV/2 could create a shopping list, like an  
20 orders list that you have seen in the claims in this  
21 case. And the parts list could then be sent directly  
22 to your parts ordering system all without moving from  
23 your PS2.

24 So here it's talking about transferring the  
25 results of the search of the parts catalogs into a



1 parts ordering system, something, for example, like  
2 RIMS. All that is set right out in the four corners  
3 of the document here.

4 And if we continue now to the next slide.  
5 This is the last page of the document. Talking about  
6 large volumes of data. Again, the idea of having  
7 multiple catalogs there being reinforced with the  
8 highlighted bullet there. And the second one, again,  
9 emphasizing what is this TV/2 thing supposed to do.  
10 It's not just going to just sit by itself and help you  
11 look at parts real fast on a computer, and then just  
12 make you go to pieces of paper from there to fill your  
13 orders. That's like driving a sports car up to the  
14 red light. What's the point of that?

15 No, if you're going to take advantage of the  
16 speed of this thing, you're going to integrate it into  
17 a computer system that takes it from the selection of  
18 the parts process, and also computerizes it from there  
19 to go ahead and build a requisition and place orders  
20 or do whatever else you want to do with that part that  
21 you have selected. You want to computerize it all.

22 So from day one, TV/2 was designed with that  
23 idea that this isn't going to be a stand alone system.  
24 It could be if you wanted it to, but it's really going  
25 to help you out if you integrated it with inventory

1 management systems, or order entry systems, and things  
2 like that that are also computerized.

3 It was designed for that. And anybody with a  
4 computer science degree and a year or two of  
5 experience would have understood that reading these  
6 materials about the TV/2 system.

7 And then also on this page, if you can back  
8 out, in the lower right. Again, just reinforcing the  
9 idea that many technical publications, many catalogs  
10 can be on a single CD-ROM. Multiple catalogs.  
11 Totally envisioned here. Totally explained,  
12 disclosed, taught by this TV/2 brochure.

13 Finally, down below, getting to the  
14 commercial benefit. Now, this brochure wasn't dated.  
15 We'll get to the testimony on that in a moment, but  
16 it's clearly a brochure intended to be marketing the  
17 product. It reads like that. It's intuitive just  
18 looking at this thing. They're trying to sell it.  
19 But you also see specifically down here on the last  
20 page in the lower right information about ordering.  
21 They're trying to sell this thing, and it's got these  
22 numbers that go with that.

23 So all those things show you exactly what the  
24 TV/2 system did. And that was also backed up with the  
25 testimony here. Especially regarding the year and the

1 timing of this thing.

2 So if we could go to the next slide, please.  
3 This is Ms. Eng's testimony, who probably got less  
4 money than anybody else who testified in this case  
5 practically, but she came back after all these years  
6 and was willing to come down here and testify in this  
7 case.

8 She said, Did you personally see this  
9 brochure back in '92? Yes.

10 How did you use it? I handed it out to lots  
11 of people.

12 That's what you do with a brochure. You want  
13 to sell the thing. You hand it out to everybody you  
14 think may want to buy it.

15 That's '92. Well over a year before August  
16 of '94. Clearly IBM is already trying to commercially  
17 benefit from the TV/2 system by then.

18 Go to the next one. The inventors from  
19 Fisher acknowledge that really the TV/2 was already  
20 out there before they even started working with or the  
21 day they started working with Fisher, IBM and Fisher  
22 started working together.

23 This is Mr. Kinross' testimony here. TV/2  
24 was available from the day you started talking to them  
25 about searching, right? The TV/2 system, yes.

1           They already had an application program  
2 interface program on it, right? That's that API thing  
3 with the shell or the communication link between TV/2  
4 and another system.

5           My understanding is it came with a sample  
6 program that even showed the use of the API. It  
7 demonstrated that.

8           Go to the next slide check. Even in the  
9 patents-in-suit, they have this language in them where  
10 the Fisher people pretty much admit that the TV/2  
11 system was available from IBM. It was already out  
12 there. They weren't saying it was some top secret  
13 system. It's available from IBM. That's in column 4  
14 of the '683, but it's in all three of them.

15          Go to the next slide, please. Here's  
16 Mr. Gounaris' testimony, the other person from IBM  
17 that testified in this case. He made it clear that,  
18 again, there weren't variations on the TV/2. The TV/2  
19 was the TV/2. There weren't any variations on it  
20 prior to '92. So there was just one system out there  
21 about it. That's what this testimony shows you.

22          If we go to the next page after this one.  
23 This is back to Mr. Momyer again, one of the inventors  
24 that ePlus brought to the case. An IBM system has a  
25 search capability that could do keyword searches

1 before you started working with them. That's Momyer  
2 working with IBM. Technical Viewer/2 could do keyword  
3 searches against a document. That was already there.  
4 Not something developed in that \$600,000 and all that  
5 time.

6 By the way, ePlus has made a big deal about  
7 that, and I guess I think the short answer to that is  
8 if you came up to somebody today, even if it was Ford  
9 Motor Company and you said, "I'd like to start  
10 production on a new Model T." Well, Model T's were  
11 around a hundred years ago. How long do you think it  
12 would take to get that Model T up and running, and how  
13 much money would it cost? How long it takes to get  
14 something to a commercial state and how much money it  
15 costs to do it doesn't tell you whether it's new or  
16 old or anything. It's really smoke and mirrors in  
17 this case to even talk about that.

18 That work was going on into 1995. That was  
19 after the patent was even filed. There's nothing  
20 about those activities in the patent. It was filed in  
21 August of '94 with the description at that time. This  
22 is all irrelevant stuff about trying to make the  
23 system work well with the RIMS or be faster. The  
24 claims don't require searching to be any particular  
25 speed or the graphic user interface to be anything in

1 particular. They don't even call out a requirement  
2 for a graphic user interface. This is all stuff  
3 that's got nothing to do with it.

4 So we can go to the next one, please. Even  
5 with that graphic user interface, TV/2 already has it  
6 from day one of starting to work between IBM and  
7 Fisher. This is Mr. Momyer again, one of the  
8 inventors, acknowledging that.

9 Go to the next slide. Mr. Momyer has even  
10 admitted that since the TV/2 program was commercially  
11 available when he had the initial meeting with the IBM  
12 people back in '93.

13 Go to the next one, please. This is  
14 Mr. Gounaris also talking about what was going on in  
15 1993, and pinpointing it, it was actually the first  
16 half of '93 when IBM and Fisher first started working  
17 together. Remember, he was up in Pittsburgh as was  
18 Fisher in Pittsburgh. So they actually started  
19 meeting together. And that was in the first half of  
20 '93, more than one year before the filing date on the  
21 patents in this suit. TV/2 was already commercially  
22 available. It was on sale under the Judge's  
23 instructions. It was prior art in this case.

24 And he confirmed that the documentation was  
25 provided. The documents, Exhibits 105 and 107, that

1 we've talked about. That's 105 is the general  
2 information manual. And highlights, features and  
3 functions of Technical Viewer/2, you saw that.

4 Then go to the next slide. This is  
5 Mr. Gounaris continuing talking about the Technical  
6 Viewer brochure. "You were physically present in '93  
7 when that brochure was passed from IBM to Fisher  
8 Scientific?"

9 "Yes."

10 So all this establishing that the TV/2 system  
11 was out there commercially available on sale more than  
12 a year before the patent.

13 So we go to the next slide here. This was  
14 the summary. I think I showed you something very  
15 similar to this, if not identical, in my opening  
16 saying this is the old IBM TV/2 system.

17 It was for electronic catalogs. It had  
18 search capabilities. It had that capability of  
19 searching selected portions. That's where the manual  
20 talks about topics. And you saw over and over again  
21 that the materials themselves say this is great for  
22 integrating with a parts order and inventory  
23 management system with that searching catalogs here  
24 and that little API or interface device.

25 So it's all there clearly and convincingly,

1 RIMS and TV/2 both out there. Both going together.  
2 Now, we showed you a little bit of additional prior  
3 art as well to give you the context for the  
4 marketplace and show that the needs in the market for  
5 these types of products for purchasing and requisition  
6 systems were already being met by some pretty old  
7 systems. That was those P.O. Writer and J-CON  
8 systems. And heard some testimony about both of those  
9 things.

10 If we could go to the next slide, please.  
11 This was one of Mr. Shamos' slides talking about that  
12 P.O. Writer system. That was Ms. McEneny who  
13 testified what you saw in the video. She talked about  
14 the P.O. Writer system. And Mr. Shamos gave some  
15 examples of the features of this thing. It was a  
16 requisition and purchasing system that even allowed a  
17 user to specify a catalog for searching. And then  
18 once you've picked a catalog like Bayless that's shown  
19 in this page, then you could pick a particular part or  
20 look for a part within that specific Bayless catalog.

21 So selecting catalogs to search, selecting  
22 parts of the database to search, and then searching  
23 them in a two-step process.

24 And if we go to the next slide. Another one  
25 of Mr. Shamos' slides here just to give an example of



1 how this P.O. Writer documentation described that a  
2 user could create a requisition. Pick the part. Now,  
3 I put it on that requisition list.

4 THE COURT: Why are we talking about P.O.  
5 Writer? Instruction 29 and 30A don't have that in  
6 there at all.

7 MR. McDONALD: This was to show the needs of  
8 the marketplace were being met and goes to the  
9 obviousness issue.

10 THE COURT: It does not go as prior art, and  
11 you're arguing it as prior art, and it's inconsistent  
12 with what you said you want as prior art. You can't  
13 have that argument. That's not right.

14 We've gone beyond that in this case. Excuse  
15 me. Disregard that about the P.O. Writer.

16 MR. McDONALD: All right. Can we go back to  
17 slide 43. So these were the key parts of the IBM  
18 literature that really show it's obvious to combine  
19 this with RIMS. So we've got all these features from  
20 the RIMS system. We've got all these features from  
21 the TV/2 system. Together they have all the elements  
22 of the claims here. So now the question is, is it  
23 obvious to combine them? The Judge will give you an  
24 instruction on that, but that's the question for one  
25 of ordinary skill in the art at the time August of '94

1 when ePlus says they made this invention that they  
2 filed for a patent on at that time.

3 So, clearly, you have this teaching in the  
4 prior art before August of '94. Anybody of ordinary  
5 skill would understand you ought to connect the dots  
6 here and combine the RIMS system and the TV/2 systems  
7 together.

8 Go to the next slide, please. So this is  
9 what they look like when you put them together, in a  
10 sense, at least that's a diagram. Again, I think I  
11 showed you this in my opening. You have all those  
12 RIMS components there. Then you have that API in  
13 green that connects that whole RIMS system to the IBM  
14 TV/2 system that searches catalogs.

15 So you put all those things together, that's  
16 one of ordinary skill in the art, was it obvious to do  
17 that prior to August of '94 using all this prior art  
18 that are existed even by August of '93?

19 You also heard the testimony from Ms. Eng  
20 that this was exactly the goal of the whole project  
21 here was to have that RIMS system work together with  
22 electronic versions of these big paper catalogs. And  
23 she described the meticulous process of having to take  
24 those paper catalog pages, get them loaded up into the  
25 electronic form so all the information would be there,

1 all the words would be there available on the  
2 computer.

3           They talked about getting the images in the  
4 system. Even Mr. Kinross talked about getting  
5 electronic versions of all the catalog pictures to IBM  
6 so they could all load it up just like the catalogs  
7 looked like. That was the whole point. Even the  
8 patent itself talks that this is reality essence of  
9 it. If we can go to slide 45. This is that part of  
10 the patent, every one of them has this -- I believe  
11 it's at the top of column 4 in the '683 patent. The  
12 electronic sourcing system 5. That's what the patent  
13 says over and over again. That's what it's describing  
14 as the invention. After the previous paragraph just  
15 talked about some basic things like a computer, a  
16 keyboard and a printer.

17           It also includes a requisition and purchasing  
18 system 40. Preferably but not necessarily the Fisher  
19 RIMS system, and a search program 50 that's capable of  
20 searching through large volumes of information quickly  
21 and accurately. Preferably, but not necessarily, the  
22 Technical Viewer/2 search program, TV/2, available  
23 from IBM is used as that search program.

24           That's what you're putting together here.  
25 Yes, it says "preferably," but, clearly, the idea here

1 was that the claims involved in this case and the  
2 invention was going to cover something that was a  
3 combination of the IBM system and the RIMS system.  
4 And so if that's in the prior art, you need to find  
5 that those claims are invalid. It doesn't matter that  
6 the claims might be so broad that they can cover other  
7 things, too. The fact that the claims are even  
8 broader than that doesn't help them escape invalidity.  
9 The question is are they too broad? The fact that  
10 they cover IBM plus TV/2. That's enough to invalid  
11 them even if they are even broader than that.

12 So I think there was a lot of talk brought,  
13 well, these are just the preferred versions of it.  
14 Well, again, that's just smoke and mirrors here. It  
15 has nothing to do with defeating the fact that the  
16 RIMS and TV/2 systems are a combination to make these  
17 claims obvious.

18 And Dr. Shamos went through with you claim by  
19 claim, element by element, to show you all the parts,  
20 every single detail of each of those claims were in  
21 either or in some cases even both of the RIMS and TV/2  
22 systems. He showed you that in a great deal of  
23 detail.

24 Now, Mr. Hilliard was the other side of that  
25 for ePlus. He was Mr. No. He was the one that said

1 nothing is a catalog anyway. It was kind of  
2 interesting because you have got this up here that the  
3 preferred embodiment is actually RIMS plus TV/2.  
4 That's what the patent says. Yet when Mr. Hilliard  
5 looked at RIMS and TV/2, he had a chart where he put a  
6 no, no, no, or an X that either or both of RIMS and  
7 TV/2 had none of the elements of many of the claims in  
8 this case. Use your common sense here. Does that  
9 really make any sense at all that what the inventors  
10 said was the preferred embodiment, RIMS plus TV/2  
11 doesn't have the elements of the claims? It just  
12 doesn't make any sense. And we showed what was going  
13 on there when we asked him some questions about that.

14 If we can go to slide 45A. He had a little  
15 trick here because, as you know, catalogs is a big  
16 issue in this case. Multiple catalogs is a big issue.  
17 And Mr. Hilliard was trying to get around the  
18 catalogs. Oh, TV/2 doesn't have a multiple catalogs.  
19 Well, wait a minute. So your testimony about TV/2 not  
20 having catalogs, you're just saying that when you buy  
21 the system from IBM, it's not going to come with your  
22 own personal catalogs that you would select to load on  
23 it, right? That's what I'm saying, yes.

24 All he was saying was when you buy the TV/2,  
25 it's empty. It doesn't have the data loaded on it

1 yet. But anybody reading the brochure or seeing the  
2 description of the product, obviously you load the  
3 data on. The picture in the brochure even shows a  
4 little picture of a CD-ROM. It talks about a CD-ROM  
5 all over the place. It was just silly for  
6 Mr. Hilliard to say, Oh, the TV/2 system, that doesn't  
7 teach multiple catalogs because I didn't put the CD in  
8 the computer yet. That's how he got around that. So  
9 that's more smoke and mirrors here about how he was  
10 able to show them that the elements aren't met because  
11 it was like dominoes for his analysis.

12 If there aren't multiple catalogs, then you  
13 can't search for items in multiple catalogs. So that  
14 one is now there. You can't build a requisition on  
15 multiple catalogs. You can't build a purchase order  
16 from a requisition from that, that those came from  
17 multiple catalogs. So all the dominoes fell down.  
18 Just because he wanted to ignore the fact that the  
19 TV/2 system was clearly for use with multiple catalogs  
20 even though when you bought it, you had to put on your  
21 own catalogs that you wanted.

22 The rest of his opinion was really based on  
23 him ignoring all of the documents about the TV/2 and  
24 the RIMS system and basically saying everything is  
25 wrong. Well, those documents were corroborated. I've

1 gone through that in great detail now with the  
2 witnesses' testimony for both systems that those  
3 documents were accurate. For all the features that  
4 are relevant to this case certainly.

5 Mr. Hilliard even said that the RIMS system  
6 wasn't really for buyers. Wasn't that interesting.  
7 Because the whole point of that RIMS brochure is to  
8 tout the system to buyers. You're filing a trademark  
9 with the Trademark Office. I'm not just going to use  
10 something internally at my company if it's just for my  
11 benefit as a seller. I'm not going to be out there  
12 using a trademark on it. I'm not going to be using it  
13 in commerce. It's just my personal system. I don't  
14 need that. But they went and filed a trademark on it,  
15 and said it was in use in commerce. And the whole  
16 brochure cover to cover is clearly targeted for people  
17 who buy products, who were going to be Fisher  
18 customers, and say, Oh, this RIMS system is great for  
19 you. And you can use it. And Mr. Hilliard just  
20 ignored the whole thing.

21 If we can go to 45C. So what did Mr.  
22 Hilliard say about the catalogs issue? This comes  
23 back again to the idea of having your cake and eating  
24 it, too, because Mr. Hilliard was on the invalid side,  
25 and he wants to say knowing is catalogs.

1           So he says no databases in the RIMS system  
2 meet the Court's definition of catalogs. He says a  
3 bunch of stuff like these experts do to spin it, but  
4 the bottom line is he says RIMS doesn't have catalogs.  
5 Parts master is not an catalog. Item master, that's  
6 not a catalog.

7           Even in the RIMS system, that big host system  
8 of Fisher catalog products that they have on that post  
9 database, well, that's a database in the RIMS system.  
10 He says that that's not even a catalog. So for him  
11 nothing is a catalog. Well, that just doesn't make  
12 any sense.

13           I guess what he was trying to say about that  
14 Fisher catalog is somehow, Well, that one doesn't  
15 relate to a vendor. That's what he tried to say about  
16 that. Again, does that make any sense at all? The  
17 Fisher database at the Fisher host computer selling  
18 Fisher's products isn't a database relating to Fisher  
19 as a supplier of products? It was nonsense.

20           Then I confirmed for him at one point, did  
21 ePlus ask you to do any analysis of the infringement  
22 issues in this case? Well, the answer was no. Well,  
23 what a surprise that is since he's Mr. No.

24           MR. ROBERTSON: I'm going to object, Your  
25 Honor. There was a Court order that indicated who



1 could testify about what issues, and --

2 THE COURT: Sustained. Just disregard that  
3 argument, please.

4 MR. McDONALD: There was no Court order on  
5 that, Your Honor.

6 THE COURT: There was a Court order saying  
7 who could testify about what.

8 MR. McDONALD: Yeah, but clearly they didn't  
9 ask him to do an infringement analysis. They had  
10 every right to do that and they chose not to. And  
11 they chose not to. I think I can establish that fact.

12 MR. ROBERTSON: Because he was a validity  
13 expert on that issue under the Court's order.

14 THE COURT: I've dealt with it. Just don't  
15 pay any attention to that part of the argument, ladies  
16 and gentlemen. Strike it.

17 MR. McDONALD: So what we've shown here is  
18 that Fisher did not invent anything worthy of a  
19 patent. They didn't invent requisition and purchasing  
20 systems. They didn't invent searching multiple  
21 catalogs. They didn't invent putting those things  
22 together. They didn't invent the Internet, using a  
23 system like that with the Internet. They did not  
24 invent EDI, electronic data interchange. They did not  
25 invent Windows. They did not invent databases. They

1 did not invent indexing databases.

2           So the second question then is if the Patent  
3 Office gave them these patents, why should you reach a  
4 different result? On this issue, you saw in that  
5 video at the beginning of the case what happens when  
6 the Patent Office reviews patent applications. There  
7 are people sitting in their offices at the Patent  
8 Office, and they have these stacks of files there.  
9 And they have a way to search at the Patent Office for  
10 patents and prior art, but they rely largely on what  
11 the applicants disclose to them.

12           You heard the inventors actually have an oath  
13 they file where they have to disclose the prior art  
14 they know about. That's because the examiner, he or  
15 she, is not in the marketplace. They are at the  
16 Patent Office. They are not out there in the  
17 marketplace, and they don't necessarily have access to  
18 all the information. And in fact, that's the case  
19 here. There's critical information that you have now  
20 that the Patent Office didn't have. You have a copy  
21 of the RIMS brochure. You have the evidence that the  
22 RIMS system was on sale more than one year before the  
23 filing date on these patents.

24           The Patent Office didn't have that. It might  
25 have mentioned the RIMS system many times in the

1 patent, but there's no information presented to the  
2 Patent Office that the RIMS system was on sale more  
3 than a year before these patents were filed.

4 That's particularly telling here if you look  
5 at 45D. This is the part of this and all three  
6 patents have something similar to the patents-in-suit.  
7 This lists the publications involved here that were  
8 disclosed and what the Patent Office did consider.  
9 This is the start of the list on this page and we go  
10 to the next page.

11 This is the rest of the publications  
12 disclosed. And there's a few publications on here  
13 about various Fisher systems like Purchase Pro,  
14 Lighting, Reliance, Stock Pro, but there are not any  
15 publications regarding the RIMS system provided with  
16 any of the patents. So that's the information that  
17 you have that the Patent Office did not have.

18 Now, people can choose to use the patent  
19 system. You heard about it in the video. It's a  
20 tradeoff. If I want a patent, I have to make this  
21 disclosure of the details of my invention, and then  
22 it's published, and everybody can see that. Well, not  
23 every company out there wants to make that trade and  
24 make that disclosure so that their competitors, for  
25 example, can know what they're doing. And that's a

1 choice. And that doesn't stop ePlus from going to the  
2 Patent Office, but it is true and the Judge will  
3 instruct you that even if a product isn't the subject  
4 of a patent like TV/2, if it's on sale more than a  
5 year before the filing date of the ePlus patent, it's  
6 still prior art. EPlus can't go get a patent on that  
7 same thing. So that's how it works. So that's why  
8 the Patent Office doesn't always have all the details  
9 about what everybody is doing out there.

10 So that's why because you have this critical  
11 information here in the courtroom that the Patent  
12 Office didn't get why you should reach a different  
13 conclusion from the Patent Office. So that's why you  
14 should decide that the claims are invalid.

15 Let's go down to question No. 3 about  
16 infringement. We made it pretty clear from the first  
17 moment in this case that this issue came down to the  
18 catalogs issue.

19 And if we could go to 45F. Mr. Weaver at  
20 least acknowledged that 11 of the 12 claims in this  
21 case required not just one catalog, but multiple  
22 catalogs in the Lawson system. So if Lawson doesn't  
23 have multiple catalogs, Lawson at least does not  
24 infringe those 11 claims. We're all on the same page  
25 on that. That's why we didn't waste your time on all

1 these other deals in the case, why it really came down  
2 to the catalogs.

3 And if we go to the slide 46, this was the  
4 Court's definition of catalogs. It has the term  
5 published by a vendor in it, and the Court also has an  
6 instruction for you on that.

7 And we showed you here, this is Exhibit 257,  
8 it's a demonstrative, but it's nothing of the sort you  
9 haven't seen before. It's one of these big catalogs.  
10 We don't get them in the mail so much anymore, but we  
11 used to. And something like this pretty clearly meets  
12 that Court definition. You can apply this pretty  
13 well. It's an organized collection. You have got the  
14 ladies clothes at the beginning. Then it goes to kids  
15 and boots and shoes and so on, product by product  
16 organized. It's about items. Things Sears is selling  
17 with associated information. Published by Sears.  
18 They are a seller, a distributor, whatever you want to  
19 call it. Includes things like a part number, price,  
20 catalog number, vendor name. Sears is on the front.  
21 It may not be on every page, but certainly on the  
22 front.

23 I don't know if it has a vendor ID, but this  
24 list isn't something that's required that you have to  
25 have all of these. That's why it has the word

1 preferably, right? Then a textual description of  
2 items and preferably, not necessarily, images of the  
3 items.

4           So that meets the definition of a catalog  
5 pretty well. That holds up with your common sense.  
6 And it's pretty consistent if we go to slide 48, I  
7 think it is. Even what the patent says about  
8 catalogs. This is a feature of the invention to have  
9 multiple catalogs from different suppliers. And it  
10 gives these examples. And I'll summarize it here, but  
11 basically it talks about published by a vendor,  
12 distributor, having the distributor's catalog numbers  
13 for their listed products. And also vendor  
14 manufacturer part numbers. Down at the bottom, line  
15 52 there, it further contained catalogs published by  
16 some of the vendor manufacturers. Again having part  
17 numbers and the like.

18           Then if you go down to about line 56. It can  
19 also contain catalogs published by outside suppliers,  
20 other manufacturers, distributors listing their vendor  
21 products different from those in the distributor  
22 catalog. So these are all these different published  
23 things out there.

24           So if we go back to 46. So that was the  
25 Court's definition of "catalog." Very consistent with

1 what the patent says. What about that last claim?  
2 I'll just talk about that a little bit. That 12th  
3 claim. That's Claim 1 of the '172 patent.

4 Now, that claim has a claim element that  
5 refers to something called an order list. So I want  
6 to show you the Court's definition of that in slide  
7 49. So even that claim requires a means for  
8 generating an order list, which is a list of desired  
9 catalog items. So here's where that concept of  
10 catalog comes into play here.

11 And if we look at slide 49A, Dr. Weaver, his  
12 analysis was entirely reliant on his opinion that the  
13 Lawson system had catalogs in it. And that even  
14 included this claim.

15 And if we could go to the next slide here.  
16 This was Dr. Weaver's testimony specific to that Claim  
17 1 of the '172 patent. It's kind of a long question  
18 here, but what's being shown here is his opinion about  
19 Lawson infringing that claim, and specifically the  
20 part of that claim that refers to an order list, that  
21 was based in part on his analysis concluding that the  
22 desired items - do you remember an order list is a  
23 list of desired catalog items - included in results of  
24 searches of product catalogs, and that's what he  
25 called catalog items. That's how he looked at it for

1 purposes of his analysis. The items you get back from  
2 product catalogs. So he relied on his analysis  
3 involving catalogs actually for all 12 of the claims.

4 So we showed you the testimony of Mr. Shamos,  
5 though, that the Lawson system doesn't have catalogs  
6 and therefore it doesn't infringe any of the 12  
7 claims. It's completely different from all that. And  
8 to illustrate what the Lawson system really is here,  
9 I'm going to show you something. This is from  
10 Plaintiff's Exhibit 361, page 49 of that exhibit, page  
11 2243. The last four digits are 2243. Do you remember  
12 Mr. Weaver showed you some demonstrations.

13 This particular one he didn't talk about. He  
14 didn't present this one to you. In fact, we talked  
15 about it, and this has something called an active  
16 items at requesting location list. This is about the  
17 closest thing in any of ePlus' materials of showing  
18 you what an item master in the Lawson system actually  
19 looks like.

20 It's this list of products. At the far left  
21 is an item number. That's the number that the  
22 customer assigns. The first one is 1007, 1008, 1009.  
23 The customer puts those in there in the order that the  
24 customer enters those item numbers. They have some  
25 descriptions of the products there. You see tape.



1 Then it goes to steri strips. I guess that's some  
2 sort of a bandage, and so on.

3 These are these very short descriptions that  
4 are only 30 characters or less. So you can see how  
5 abbreviated they are. And you heard the testimony  
6 that those are the things the customer comes up with.  
7 And they're not trying to sell anything here. They're  
8 not trying to give you a big description to entice you  
9 to buy anything. They're just reminding themselves  
10 which one that is because this is the thing they buy  
11 over and over.

12 Over on the far right it talk about that  
13 being tracked. That's their inventory. This is their  
14 own personal inventory. Yes, we track it. Yes, we  
15 monitor our inventory on this thing. This is the  
16 closest thing that ePlus had to show you what the item  
17 master actually looks like. And they have never  
18 linked this or anything else to a published vendor  
19 catalog. It doesn't look like it, and it's from the  
20 customer. This is an organized collection of  
21 information, yes, but it's the customer who organized  
22 it. The vendor never even sees this.

23 So how could the vendor publish this? An  
24 organized collection. And that's what has to be  
25 catalogs here. It just doesn't look like a catalog as

1 the Court has defined it.

2 So Dr. Weaver never showed either a single  
3 vendor catalog that actually came from a vendor and  
4 said, Oh, look. Here's one of those vendor catalogs  
5 that comes from somebody selling products to a Lawson  
6 customer and compare that now to the item master. Oh,  
7 look, they look similar, don't they? Dr. Weaver never  
8 did that.

9 The reason he didn't do that is because he  
10 wouldn't have been able to show that that comparison  
11 would hold any water.

12 So they talk about what Dr. Weaver did do,  
13 but it's what Dr. Weaver did not do that's the most  
14 important thing here.

15 And they didn't do that even though they  
16 picked four of our customers to give them information  
17 about who our customers are. They picked four of them  
18 to depose and subpoena. And you heard from -- I think  
19 you heard from three of them in the case as it wound  
20 up. Mr. Yuhasz was live, Mr. Matias and Ms. Cimino.  
21 Those are our customers that they picked. They didn't  
22 show you anything in those depositions or documents  
23 that would show catalogs.

24 If we could go to slide No. 51. Actually,  
25 let's go to 52. So Lawson doesn't infringe these

1 patents because it doesn't have multiple catalogs. It  
2 doesn't have published catalogs. It doesn't have  
3 catalogs published by inventors. We've got very basic  
4 information.

5 The whole purpose of an item master is  
6 different from the purpose of catalogs. Catalogs are  
7 from vendors to sell things. The item master is to  
8 track personal customer's private inventory. Short  
9 descriptions selected by the customers. It's an  
10 inventory list like a shopping list just trying to  
11 keep track of what they've got in stock. Also control  
12 what their employees can buy. That's a big thing here  
13 in comparison and contrast to catalogs.

14 You heard Mr. Robertson talk about comparison  
15 shopping. That's the intent of these patents. Let's  
16 the employees go out there and maybe do some shopping  
17 and things. And that might be good in some  
18 situations. If some customers want to do that, that's  
19 fine. But for some companies, they would say, I don't  
20 want my employees doing that. I just want them to go  
21 buy the pens. I don't want them out there shopping  
22 around looking for new pens that are different or more  
23 expensive or whatever and wasting time on that.

24 The Lawson system is all about control. The  
25 patented system a all about empowerment of the

1 customers. Two very different purposes here.

2 So let's go to the evidence now on the issue  
3 of the catalogs. The testimony showed that Lawson  
4 doesn't have catalogs.

5 Can we go to slide 53, I think it is. This  
6 is Mr. Christopherson's testimony here. Using the  
7 definition the Court just gave for published by a  
8 vendor, is the customer's item master database ever  
9 published by a vendor? The Judge said just answer it  
10 yes or no. Mr. Christopherson then answered no. So  
11 Lawson people showing that the item master is not a  
12 catalog as the Court defined it. Customer testimony  
13 is well.

14 If we go to 55. This is Mr. Yuhasz. He was  
15 the customer that showed up in court here. He was  
16 nice enough to do that from Novant. Is this data in  
17 Novant item master generally known? No.

18 Is the item master data maintained as  
19 private? Yes.

20 And the supporting differences here from the  
21 published catalog. If we go to the next slide, 56.  
22 Mr. Yuhasz actually explained that they already had  
23 the Lawson system that's accused of infringement in  
24 this case with the requisition and purchase order and  
25 inventory control modules, but they were looking for

1 the ability to have what he called a better option  
2 that we felt had product catalogs. They wanted to be  
3 able to search for more things.

4 They wanted something different from what  
5 Lawson had. Were these features as the Lawson system  
6 as it was installed at Novant did not provide? Yes.

7 Here's his testimony that he, having one of  
8 the accused systems, didn't think it had product  
9 catalogs. He was actually putting it out for bid. He  
10 was willing to write another check for somebody else  
11 to go in and add that capability. Well, there's some  
12 real world market information for you that really  
13 shows why the Lawson system doesn't have catalogs.

14 If we could go to the next slide. This is  
15 the inventor testimony. They didn't talk about the  
16 Lawson system, but they did talk about the parts  
17 master that they acknowledge was like an item master.

18 This again relates to the have your cake and  
19 eat it too, issue. So that parts master that has the  
20 same sort of things like we have on the blow up here,  
21 item part number, a short description, tracking and  
22 inventory, that isn't the same thing as the catalogs  
23 you had in mind as the invention for these  
24 patents-in-suit, right? I don't think so. For me,  
25 no, they aren't the same.

1           Again, the parts master, that's the same sort  
2 of thing as an item master, correct? Yes.

3           Mr. Momyer. If we go to the next slide.  
4 Again, reinforcing that that RIMS system as of  
5 April '93 had that parts master. That would not meet  
6 the Court's definition of a catalog, Mr. Momyer's  
7 testimony.

8           THE COURT: It says Mr. Kinross.

9           MR. McDONALD: I'm sorry. Is that Kinross?  
10 You're right. It's Mr. Kinross. Thank you.

11           Then go to the next slide. So we're back to  
12 Mr. Momyer again here. This is confirming that that  
13 parts master in the RIMS system, that's parts that a  
14 customer would select, just like in the Lawson item  
15 master. That's what they would track for their  
16 stockroom or inventory. Just like the Lawson item  
17 master.

18           Go to the next slide. This is the third  
19 inventor who testified, Mr. Johnson, now. Again  
20 acknowledging the RIMS system had a parts master, but  
21 he didn't think that it had a catalog, though.

22           Then if we go to the next slide. This is  
23 Mr. Hilliard, their invalidity expert. Of course he's  
24 Mr. No. This was an easy quote to find because  
25 nothing was a catalog for him. But he acknowledged

1 here with the Court's definition of catalogs that  
2 there were no databases in the RIMS system that met  
3 the Court's definition of catalogs.

4 So you have all of these Lawson witnesses,  
5 all the inventors, even one of ePlus' experts  
6 acknowledging that a parts master, which was just like  
7 an item master, doesn't meet the definition even for  
8 one catalog, let alone multiple catalogs.

9 So who was the only witness in this case who  
10 said Lawson's item master was multiple catalogs? It  
11 was Dr. Weaver. Dr. Weaver's approach, just about any  
12 list of item information is not only a catalog, it's  
13 actually multiple catalogs. That's incredible. It  
14 defies common sense. And we went through that with  
15 him in a couple of ways.

16 If we go to the slide 63. Remember, I asked  
17 him, because he was saying that as long as the  
18 information originated in some part from a vendor,  
19 that meant the vendor actually published the organized  
20 collection. I gave them that example if I had a  
21 personal address book, and I was going to put a phone  
22 number in it that came from a phone book, my address  
23 book if it has one entry from a published phone  
24 company's phone book, my address book has an entry in  
25 it that originated from the phone book, right,

1 Mr. Weaver? Correct.

2 But in that case, even if it's my personal  
3 address book, I didn't publicly disseminate it. I  
4 kept it in my own house. Would you consider that to  
5 be a published phone book? Answer: Well, that data  
6 came from a published phone book, so, yes.

7 So Dr. Weaver said the address book is the  
8 same thing as a published phone book. It doesn't make  
9 any sense. But it doesn't end there.

10 Can we go to the next slide, please. I went  
11 on to talk to Dr. Weaver about how within the item  
12 master -- he had to come up with a way to say this one  
13 database was actually multiple catalogs. So he had to  
14 be a little creative there. What he came up with is  
15 this line of reasoning. So if you search for the word  
16 "blue," you get back results from the Lawson item  
17 master that would be the catalog of blue things  
18 because when you search "blue," you're searching for  
19 the item master description, right? Answer: Yes.

20 If I search for the number five, it would  
21 generate a list of all the things that had a number  
22 five in the description? It would.

23 In your opinion each one of these is a  
24 separate catalog; is that right? Yes.

25 So is there really any limit to the number of



1 catalogs in the Lawson item master the way you look at  
2 it? No.

3 The Lawson item master has a limitless number  
4 of catalogs according to Dr. Weaver. Mr. Hilliard,  
5 though, would say a parts master, which is just like  
6 an item master, has no catalogs at all. Having their  
7 cake and eating it, too. That's what we have going  
8 on.

9 And that's even established on this last  
10 thing with Mr. Momyer's testimony. If we could go to  
11 slide No. 65. We talked to Mr. Momyer about this part  
12 of their patents-in-suit.

13 Go back to 65, please. Blow up the part  
14 that's yellow. This is in the background section of  
15 the patents. They acknowledge, Well, there are  
16 computer systems out there capable of searching  
17 databases containing a product catalog of a particular  
18 vendor. For example, on CD-ROM.

19 But down here you see around line 10, Well,  
20 those are limited, though, in that only one such  
21 vendor catalog. That's one such vendor catalog is  
22 accessible to a user at any given time.

23 So I asked Mr. Momyer about that since he's  
24 one of the inventors of this thing. If we could go to  
25 No. 66, please. I asked him about that section.

1 Would the fact you could search that single CD-ROM for  
2 products of a certain color, would that mean the  
3 CD-ROM actually contains multiple catalogs depending  
4 on what word you searched with? His answer was: To  
5 me, the catalog would indicate the company you were  
6 buying the product from, he went on to explain.  
7 Bottom line. So it would be a single catalog.

8 So even though you could do keyword searches  
9 and look up all sorts of different words within that  
10 catalog, it's still as you understood it for purposes  
11 of your patent a single catalog, right? Yes.

12 So here is Mr. Momyer applying a little  
13 common sense by saying a catalog is a catalog. It's  
14 not a limitless number of catalogs. But he's one of  
15 the inventors here talking about a part of the patent,  
16 so that's really important here.

17 I talked to Dr. Weaver a little more about  
18 the item master. I think ePlus and their expert knew  
19 that this catalog issue was pretty important from day  
20 one in this case or certainly before trial. And that  
21 the item master and whether it's catalogs is  
22 important. So it's pretty striking, I think, wasn't  
23 it, when we had slide 15 from his presentation which  
24 is my slide No. 67? Do you remember he had these  
25 blocks that he stacked up. I talked to him, and he

1 said, Those system shown in those systems were a  
2 complete and comprehensive infringing system. It had  
3 everything that had to be infringing, including  
4 multiple catalogs, right? Eleven of the 12 claims  
5 specifically say multiple catalogs or collection of  
6 the catalogs, at least two catalogs. Some variation  
7 on it.

8           So the item master is the catalogs. Dr.  
9 Weaver, where is the item master? Do you remember  
10 that pause? Do you remember he was starring at that  
11 screen for a long time? This was his own slide he  
12 did. But he starred at it for a long time there  
13 because he knew it wasn't there. And that's really  
14 the story of their whole infringement case. It's just  
15 not there.

16           I want to show you one more thing about  
17 Dr. Weaver's analysis. This has to do with the  
18 selecting catalogs or portions of the database to  
19 search issue. That's not in all the claims here, but  
20 I think it's important to illustrate.

21           67A, if we could go to that. This is the  
22 part of the patent that actually talks without  
23 selecting catalogs to search. You get a choice of  
24 some catalogs. In the example here they have four.  
25 It doesn't have to be these four, obviously, but this

1 is how the patent talks about it. The user gets to  
2 select the catalogs to search, and then you can search  
3 within the catalogs. You search for particular items.

4 Dr. Weaver didn't show anything about the  
5 Lawson system that does anything like that. And, in  
6 fact, if we look at Mr. Momyer's testimony about this  
7 feature at 67B, he explains why you do it this way.  
8 Well, there was explanation evidence in the case  
9 anyway that explained you might want to let a user  
10 pick particular catalogs to search because that will  
11 make the search more efficient. You don't have to  
12 look through catalogs that you know are from companies  
13 you don't want to buy from or don't have the stuff you  
14 want. That was the point. And there's really nothing  
15 like that in the Lawson system.

16 And instead Dr. Weaver had to go to a whole  
17 different thing really to try to fit this square peg  
18 in a round hole on selecting catalogs.

19 If we go to slide 68, this is from  
20 Dr. Weaver's presentation in Exhibit 363. This is  
21 where he went -- if you can blow up the upper left  
22 quadrant or so.

23 Remember, Dr. Weaver after he had done a  
24 search just for Dell, he came back with six products  
25 in the demo. Then he tried to show you, Well, now

1 what I'm going to do is a search within just those six  
2 things just to get the Dimension 8100. He was  
3 suggesting to you he was just searching the six to get  
4 two of the size, but what you see here is really what  
5 was going on as he was searching the entire database  
6 again.

7 Because up in the upper left corner there,  
8 you see Dell, Dimension 8100. And it says below that,  
9 Search all fields. And it's got that comma in it.  
10 You might say why does it have that comma in there?  
11 Well, if you look down here at the descriptions of the  
12 products, those two particular products have Dell  
13 comma space Dimension 8100 in the item description.  
14 He was searching the whole database, but he wanted to  
15 make sure he just got those two items, so he stuck a  
16 comma in there. That's what was going on there.

17 This is kind of like one of those Google  
18 searches that you just put it in quotes. It was an  
19 exact search. It wasn't narrowing the search to any  
20 catalogs that the user selected. This has nothing to  
21 do with what the patent is talking about, the  
22 patents-in-suit are talking about.

23 I'd like to turn now to the Punchout issue.  
24 If we could go to slide 68. About 11 percent of  
25 Lawson's customers that have the basic requisition

1 purchasing and inventory control systems have this  
2 Punchout option. So it's really used by a small  
3 minority of the customers here, and it really kind of  
4 confirms that the item master itself doesn't  
5 necessarily meet all your needs if you're looking for  
6 lots of products out there.

7 But what we showed here, just as we talked  
8 about at the beginning, that to get Punchout, that's a  
9 private interaction, that's not on the Internet.

10 EPlus tried to suggest that Lawson has control over  
11 what goes on at the vendor because Lawson interacts  
12 with the vendors to come up with the right handshake  
13 to make sure they can talk to each other. But Lawson  
14 doesn't have any control over the vendor catalog or  
15 the searching.

16 Dr. Weaver didn't show you anything about  
17 what goes on at the vendor website or where the search  
18 modules or anything else like that are. That's not a  
19 part of their case. And so I think that the fact that  
20 that's a secured site means it's not published.

21 Remember the testimony was this was, again, the  
22 customer's personal website, their personal pricing.  
23 It's got nothing to do with, well, it would be out  
24 there published and generally disseminated by a  
25 vendor.

1           Also, there's the communication link. It's  
2 kind of like, I don't know if this happens much  
3 anymore, but a boss had a secretary and wanted her to  
4 place a call for him. She'd dial up the phone, get  
5 the contact connection established, and once the call  
6 is ready, she says, Okay, boss, so-and-so is on the  
7 line for you. And he takes over.

8           Well, in that case the secretary might have  
9 set up the connection link, but the secretary doesn't  
10 have any control over what happens from there.  
11 Certainly doesn't have control over what's going on at  
12 the other end of the line. So Lawson doesn't control  
13 this. They haven't shown any infringement to Lawson  
14 here.

15           There was a little discussion of the intent  
16 issue in this case. And on the one hand for direct  
17 infringement, Lawson, intent is not an issue, but if  
18 they're going to try to show some inducement of  
19 infringement by others, the Judge will instruct you  
20 that they do have to prove that Lawson actually  
21 intended to cause infringement. I think you've seen  
22 that there's no evidence that Lawson was trying to  
23 cause anybody to infringe.

24           Finally, I'd like to turn to the issue of  
25 competition. And let's put up slide 69 because I

1 think this is a nice summary really of the whole case  
2 here. Because on the right side you see the RIMS  
3 system combined with TV/2. That's really what the  
4 claims are about, no. 1.

5 You also see it's just all the pieces from  
6 RIMS plus TV/2. So it's an obvious combination,  
7 No. 2. And you can also see by comparing it to the  
8 left side, it's just completely different from what  
9 the Lawson system is. Lawson doesn't even have the  
10 whole RIMS system, let alone the RIMS system combined  
11 with the TV/2 systems because Lawson just uses that  
12 item master.

13 There was some discussion about competition  
14 in this case. I guess it's somewhat relevant to the  
15 issue of are we really selling the same product or are  
16 we selling something different? And that's the issue  
17 that we talked about briefly before. Ms. Marion came  
18 in and supposedly talked to me about infringement, but  
19 she had to admit that her documents don't even  
20 identify Lawson as a competitor.

21 EPlus didn't show you any documents in this  
22 case, their own corporate records, that would indicate  
23 Lawson is a competitor. When their sales were down  
24 and they had to revalue the division, they didn't  
25 blame Lawson for losing sales. Lawson had nothing to



1 do with it as portrayed in their SCC filings.

2 Richard Lawson himself testified in this  
3 case. He's been with Lawson since day one, 1975.  
4 Helped them build that original item master and all  
5 that. He testified that he had never heard of ePlus  
6 until this lawsuit came along.

7 All the Lawson witnesses said that. The only  
8 one that didn't was Mr. Lohkamp, who ran into ePlus  
9 once at a trade show before he even worked for Lawson.  
10 So this really confirms the common sense notion here  
11 that the companies sell different products. They  
12 didn't really see each other in the marketplace.  
13 They're different.

14 So in conclusion here, I think I've answered  
15 the three questions that I think you need to answer  
16 here. One is that the Fisher people didn't invent  
17 anything that wasn't obvious in view of the RIMS and  
18 TV/2 prior art. It's something that was done before.

19 Two, that you have got information the Patent  
20 Office did not have, and that's why you should make a  
21 different decision about this and find these payments  
22 invalid.

23 Three, Lawson system is completely different.  
24 Its purpose is different. The item master is just  
25 tracking a customer's personal inventory. It's got a

1 whole different purpose. It's got a whole different  
2 organization. It's not published by a vendor. It  
3 does not meet the Court's definition of catalogs. So,  
4 therefore, there's no infringement either.

5 So I'd like to talk a little bit about the  
6 verdict form. There are a lot of questions on there,  
7 but the answers, I think, at least we can make this  
8 simplified a little bit. You've got the first section  
9 on infringement. If you believe the Lawson witnesses,  
10 basically, you would have to find there's no  
11 infringement.

12 So for all the part 1 questions about  
13 infringement, you should check the box no. That's  
14 Roman numeral 1.

15 Roman numeral 2 on validity, there's two  
16 sections of that. One is part A. If you find that  
17 Lawson has proven by clear and convincing evidence  
18 that any of the following claims are anticipated by  
19 the Fisher RIMS systems.

20 If we could put slide 69 up again. On this  
21 question, the only reason the Fisher RIMS system would  
22 actually anticipate the claims is if you found that  
23 the Fisher RIMS system actually had multiple catalogs.

24 I think we have shown that neither the parts  
25 master, nor the item master had multiple catalogs. If

1 you agree with me and you say no on infringement, I  
2 think you should also say no on part 2A on validity.  
3 You'd only say yes in part 2A if you agree with  
4 Mr. Weaver that those parts masters have multiple  
5 catalogs.

6 And then finally with part 2B, if you find  
7 that Lawson has proven by clear and convincing  
8 evidence that any of the following claims are  
9 anticipated by U.S. Patent No. 5,712,989, same thing.  
10 If you agree with Dr. Weaver on multiple catalogs, say  
11 yes. If you don't agree with Mr. Weaver, say no.

12 Then in Section C, this has to do with the  
13 claims being obvious in light of the combination, my  
14 main argument, of, one, the RIMS system, the RIMS  
15 brochure, and/or that RIMS patent. And two, the TV/2  
16 system and/or the TV/2 literature.

17 I think that you should say yes on all of  
18 those whether you agree with Dr. Weaver on catalogs or  
19 not because TV/2 provides published catalogs even as  
20 Dr. Weaver defined them. So it's still obvious even  
21 under his approach. So they should all be marked yes  
22 in Section C.

23 And then you have to fill in the blank in  
24 Section C: Which prior art are you relying on? There  
25 you should just put in "RIMS system plus TV/2 system."

1 That should be your answer to all those questions in  
2 part C after you answer those questions yes.

3 So in view of all the evidence, I think we  
4 have clearly and convincingly shown the invalidity of  
5 the patent, shown you why Lawson doesn't infringe, and  
6 I believe you should render a verdict in favor of  
7 Lawson. Thank you.

8 MR. ROBERTSON: Your Honor, could I ask for a  
9 brief restroom break?

10 THE COURT: I'm going to ask the jury. We're  
11 going to have to take a recess in any event for this,  
12 and then Mr. Robertson has what, 30 to 45 minutes?

13 MR. ROBERTSON: Yes, sir.

14 THE COURT: More argument. Your lunches are  
15 here. Would you like to have lunch and then come back  
16 after that for his final argument?

17 THE JURY: Yes.

18 THE COURT: Okay. Your lunches are here.  
19 Please take your pads with you.

20 (Jury is exiting the courtroom.)

21 THE COURT: All right. We'll take one hour  
22 for lunch.

23 (Luncheon recess taken.)  
24  
25